

# SENTENCING COMMISSION MINUTES

<b>Committee</b>	<b>Utah Sentencing Commission</b>
<b>Date</b>	Wednesday, August 3, 2011
<b>Time</b>	Noon – 2 p.m.
<b>Location</b>	Utah State Capitol Complex, Senate Bldg., Copper Room
<b>Members Present</b>	Heidi Buchi for Patrick Anderson, Paul Boyden, Curt Garner, Ron Gordon, Benjamin McMurray, Mark Moffat, Judge Gregory Orme, Mike Haddon for Tom Patterson, Sy Snarr, Scott Reed for Kirk Torgensen, Carlene Walker
<b>Members Excused</b>	Judge Kevin Allen, David Brickey, Susan Burke, Judge Janice Frost, Marlene Gonzalez, Rep. Richard Greenwood, Judge Thomas Low, Senator Ben McAdams, Judge Ric Oddone, Chief Ed Rhoades, Rep. Jennifer Seelig, Doyle Talbot, Senator Dan Thatcher, Sheriff James Winder
<b>Staff &amp; Visitors</b>	Staff: Jennifer Hemenway, Jo Lynn Kruse, Dr. Ben Peterson, Jacey Skinner, David Walsh Visitors: Susan Allred, Rep. Fred Cox, Blake Nakamura
<b>Agenda Item</b>	<b>Welcome and Approval of Minutes</b>
<b>Notes</b>	Carlene Walker called the meeting to order and welcomed everyone. The June minutes need to be approved at the October meeting due to failure to achieve a quorum today.
<b>Agenda Item</b>	<b>Introduction of New Member – Senator Thatcher</b>
<b>Notes</b>	Senator Thatcher has been appointed to serve as our new republican senator. He was unable to be at today's meeting.
<b>Agenda Item</b>	<b>Kidnapping Offender Amendments</b>
<b>Notes</b>	<p>Rep. Fred Cox presented proposed legislation regarding the ability of certain offenders to petition the court for removal from the Sex and Kidnap offender registry. Susan Allred from the office of Legislative Research and General Counsel is assigned to this bill. The bill modifies the Code of Criminal Procedure regarding information on the Sex Offender and Kidnap Offender Notification and Registration website by providing a judicial process by which a kidnap offender convicted under Section 76-5-301 may petition the court for removal from the registry.</p> <p>During the 2010 legislative session Rep. Ron Bigelow sponsored a bill that removed the requirement for certain kidnap offenders to comply with the requirements of the Sex and Kidnap Offender Registry. As a result, offenders convicted of the subsections of kidnapping that were the focus of Rep. Bigelow's bill and were required to register at the time of their conviction are still required to register even though the underlying offense is no longer included in the registry. Current law does not provide a way for an offender to be removed from the registry. This bill provides a process for the specified offenders to petition the court for removal if they meet certain requirements and the court finds that it is in the interests of justice to do so. This process is limited to offenders convicted of kidnapping before the 2010 legislation was enacted- the intent is to identify those offenders who are required to register but would not be required to register if their conviction took place today. Rep. Fox feels that a person's removal from the registry would help them obtain employment and housing. Under this bill, instead of an automatic removal, the court would evaluate individually to decide if they should be removed from the registry.</p> <p>Paul Boyden brought up the concern that the registry not become part of the criminal sanction and that this process should not make registration part of the penalty. The point was emphasized that the registry is an administrative penalty and that removal from the administrative registry, although heard in the same court, would be a civil proceeding.</p> <p>The Commission gave the following input to Rep. Cox:</p> <ul style="list-style-type: none"> <li>• Work on wording on line 444 regarding excluding traffic offenses from offenses that would</li> </ul>

	<p>preclude a petition to include a broader range of minor crimes or wording to make the preclusions more related to public safety and increase the discretion of the judge.</p> <ul style="list-style-type: none"> <li>• Line 442 should add wording to require completion of Board of Pardons ordered treatment in addition to court ordered treatment</li> <li>• Line 460, change to "within 45 days of mailing notice to the victim" rather than 45 days after victim receipt. Also send first class mail rather than registered mail.</li> </ul> <p>Carlene Walker invited Rep. Cox to return and present the legislation with those changes during the October meeting if he should so wish to proceed.</p>
<b>Agenda Item</b>	<b>Sex &amp; Kidnap Offender Registry Amendments</b>
<b>Notes</b>	<p>Rep. Jack Draxler was unable to attend today, and asked that Ron Gordon explain his legislation. Ron explained Rep. Draxler's bill which creates a process by which individuals required to register on the Sex and Kidnap Offender Registry for specific listed offenses may petition the court for removal from the registry.</p> <p>Beginning on line 449, the bill specifies three different crimes eligible to petition the court: unlawful sexual activity with a minor, unlawful sexual conduct with a 16 or 17 year old, and voyeurism. Rep. Draxler plans to modify line 451 to limit the ability to petition to misdemeanor violations of voyeurism. Line 452 includes an additional eligibility requirement that at least five years have passed since the completion of the offender's sentence. Judge Orme noted that both bills require completion of court ordered or BOP ordered treatment, but neither bill requires satisfactory completion of court ordered restitution. The Commission discussed the relevance of the payment of restitution to the interest of public safety and made the recommendation that the Representative consider the issue. The Commission suggested the possible change for Line 453 to read "the offender has successfully completed all court-ordered treatment and court ordered conditions or restitution".</p> <p>The Commission made the above recommendations and suggested that Rep. Draxler return in October to discuss the bill with the alterations.</p>
<b>Agenda Item</b>	<b>Early Case Resolution and Sentencing</b>
<b>Notes</b>	<p>Salt Lake County has begun a pilot program known as Early Case Resolution, or ECR. ECR is intended to identify easily resolvable cases to be handled as quickly as possible. The expressed intent was to provide "the same justice sooner." At arraignment, prosecutors provide defendants with a plea offer, as well as a sentencing recommendation that is part of the offer. Pleas are taken under Rule 11, which means the terms of the plea, including the sentence, are presented to, approved of by, and binding to the judge accepting the plea. As a result sentencing determinations are based solely upon the plea agreement, outside of Adult Sentencing and Release Guidelines and without a risk and needs assessment. The pilot program is funded by federal stimulus money administered by CCJJ. ECR began in February of 2011 at the Matheson Courthouse where two 3<sup>rd</sup> District judges were assigned to handle the designated cases.</p> <p>Representatives from the county were invited to attend the meeting to explain sentencing practices as they are applied in ECR. They were not in attendance. Blake Nakamura from the District Attorney's Office was present with Paul Boyden and gave some explanation. A short discussion of the program was held- but in the absence of the administrators of the program, the item will be continued during the October meeting. A status report will be given to CCJJ next week.</p>
<b>Agenda Item</b>	<b>Corrections and Sex Offender Treatment</b>
<b>Notes</b>	<p>The Sentencing Commission expressed interest in statistics on the sex offender prison population at the annual meeting to determine the adequacy of the current funding for the treatment of sex offenders and determine if the Commission should make a specific recommendation to the Governor and the Legislature that they include an increase in funding in the budget during the next legislative session. Mike Haddon reported that almost one third of the prison population is sex offenders. The prison has not received any increased funding for almost eleven years now.</p> <p>Presently, there are 35 female sex offenders incarcerated and 2,063 males. Our current treatment</p>

	capacity consists of 200 treatment slots for sex offender treatment at the Draper site. There is a contract to place 32 sex offenders in San Juan County Jail. The prison could treat double that amount of prisoners if an additional \$600,000 funding were available. Mike is consulting with Director Tom Patterson and will refine his estimates in anticipation of the 2012 legislative session and report again in October.
<b>Agenda Item</b>	<b>Other</b>
<b>Notes</b>	An email will be sent to commission members detailing the dates of upcoming Sentencing Commission meetings.
<b>Next Meeting</b>	The next meeting will be on October 5, 2011, Utah State Capitol Complex, Senate Bldg., Copper Room

Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ